

Court System

**For the Years Ended
June 30, 2000, and June 30, 1999**

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STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
State Capitol
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John G. Morgan
Comptroller

October 30, 2001

The Honorable Don Sundquist, Governor
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243
and
The Honorable E. Riley Anderson
Chief Justice of the Supreme Court
Supreme Court Building
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is the financial and compliance audit of the Court System for the years ended June 30, 2000, and June 30, 1999.

The review of management's controls and compliance with policies, procedures, laws, and regulations resulted in certain findings which are detailed in the Objectives, Methodologies, and Conclusions section of this report.

Sincerely,

John G. Morgan
Comptroller of the Treasury

JGM/mb
01/057



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March 26, 2001

The Honorable John G. Morgan
Comptroller of the Treasury
State Capitol
Nashville, Tennessee 37243

Dear Mr. Morgan:

We have conducted a financial and compliance audit of selected programs and activities of the Court System for the years ended June 30, 2000, and June 30, 1999.

We conducted our audit in accordance with government auditing standards generally accepted in the United States of America. These standards require that we obtain an understanding of management controls relevant to the audit and that we design the audit to provide reasonable assurance of the Court System's compliance with the provisions of policies, procedures, laws, and regulations significant to the audit. Management of the Court System is responsible for establishing and maintaining internal control and for complying with applicable laws and regulations.

Our audit disclosed certain findings which are detailed in the Objectives, Methodologies, and Conclusions section of this report. The department's administration has responded to the audit findings; we have included the responses following each finding. We will follow up the audit to examine the application of the procedures instituted because of the audit findings.

We have reported other less significant matters involving the department's internal controls and/or instances of noncompliance to the Court System's management in a separate letter.

Sincerely,

Arthur A. Hayes, Jr., CPA
Director

AAH/mb

State of Tennessee

Audit Highlights

Comptroller of the Treasury

Division of State Audit

Financial and Compliance Audit Court System

For the Years Ended June 30, 2000, and June 30, 1999

AUDIT SCOPE

We have audited the Court System for the period July 1, 1998, through June 30, 2000. Our audit scope included a review of management's controls and compliance with policies, procedures, laws, and regulations in the areas of appellate court clerk revenue, indigent defense payments, court reporter payments, and disbursements. The audit was conducted in accordance with government auditing standards generally accepted in the United States of America.

AUDIT FINDINGS

The Appellate Court Clerk's Billing and Cash-Receipting Controls Are Inadequate**

The Appellate Court Clerk's controls over billing and cash-receipting are inadequate at all three Appellate Court Clerk offices. The new billing department does not collect delinquent litigation taxes on a percentage basis as required by *Tennessee Code Annotated*. Also, cash-receipting weaknesses, including failure to write cash receipts in the Eastern Division and failure to make timely deposits in all three divisions, were noted (page 7).

The Indigent Defense Daily Report System Still May Not Accurately Detect Overbilling

A lack of controls within the Daily Report System contributes to an environment where fraud or accounting errors could again occur (page 11).

The Administrative Office of the Courts Violated State Contracting Procedures*

The Administrative Office of the Courts signed contracts with private court reporters. However, the contracts were signed for the state only by the administrative director.

By law, all such contracts should be submitted to the Comptroller of the Treasury for approval (page 15).

Management of the Administrative Office of the Courts Has Not Implemented an Effective Internal Control System

The internal control system for the Administrative Office of the Courts (AOC) is inadequate in three key areas. The AOC does not have written accounting policies and procedures; a disaster recovery plan; or a formal, written conflict of interest policy. As a result of the weak internal controls, transactions were not always coded properly (page 18).

* This finding is repeated from the prior audit.

** This finding is repeated from prior audits.

ISSUE FOR LEGISLATIVE CONSIDERATION

County Funding of Certain State Judges' Offices and the Provision of Salary Supplements to Certain Employees

Currently, county governments provide varying levels of support to state judges; some counties make no provision for the operation of the judges' offices while others provide office space, office supplies, utilities, and reimbursement of certain travel expenses. In addition, some county governments provide salary supplements to individuals employed in certain judges' offices. These salary supplements are paid through the county's payroll system, and these employees receive varying levels of county benefits; some employees have been allowed to participate in county insurance and retirement plans, while others have not.

The presence of both state and county funding sources increases the risk that the same expense item could be submitted for reimbursement to more than one funding source, whether intentionally or as a result of errors. The officials responsible for approving payments at the state and county levels do not have a mechanism to determine what expenses have also been paid by another funding source. The General Assembly should consider requiring any county funding of the state judges' offices, except for office space provided in county-owned facilities, to be remitted to the state and then paid through the state system (page 20).

A similar situation involving a district attorney general's office and county-funded credit cards previously resulted in abuse of public funds.

"Audit Highlights" is a summary of the audit report. To obtain the complete audit report, which contains all findings, recommendations, and management comments, please contact

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**Audit Report
Court System
For the Years Ended June 30, 2000, and June 30, 1999**

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
Post-Audit Authority	1
Background	1
AUDIT SCOPE	5
PRIOR AUDIT FINDINGS	5
Resolved Audit Finding	5
Repeated Audit Finding	5
OBJECTIVES, METHODOLOGIES, AND CONCLUSIONS	6
Appellate Court Clerk Revenue	6
Finding 1 – The Appellate Court Clerk’s billing and cash-receipting controls are inadequate	7
Indigent Defense Payments	10
Finding 2 – The Indigent Defense Daily Report System still may not accurately detect overbilling	11
Court Reporter Payments	14
Finding 3 – The Administrative Office of the Courts violated state contracting Procedures	15
Disbursements	17
Finding 4 – Management of the Administrative Office of the Courts has not implemented an effective internal control system	18

TABLE OF CONTENTS (CONT.)

	<u>Page</u>
ISSUE FOR LEGISLATIVE CONSIDERATION	20
OBSERVATIONS AND COMMENTS	21
Title VI of the Civil Rights Act of 1964	21
Title IX of the Education Amendments of 1972	22
APPENDIX	22
Divisions and Allotment Codes	22
Expenditures by Allotment and Division, June 30, 2000	23
Funding Sources, June 30, 2000	23
Expenditures by Allotment and Division, June 30, 1999	24
Funding Sources, June 30, 1999	24
Total Indigent Defense Claims Filed by Fiscal Year	25

Court System

For the Years Ended June 30, 2000, and June 30, 1999

INTRODUCTION

POST-AUDIT AUTHORITY

This is the report on the financial and compliance audit of the Court System. The audit was conducted pursuant to Section 4-3-304, *Tennessee Code Annotated*, which authorizes the Department of Audit to “perform currently a post-audit of all accounts and other financial records of the state government, and of any department, institution, office, or agency thereof in accordance with generally accepted auditing standards and in accordance with such procedures as may be established by the comptroller.”

Section 8-4-109, *Tennessee Code Annotated*, authorizes the Comptroller of the Treasury to audit any books and records of any governmental entity that handles public funds when the Comptroller considers an audit to be necessary or appropriate.

BACKGROUND

Fourteen divisions are currently included within the Court System. The Administrative Office of the Courts (AOC) administers 13 of these divisions, and the state Board of Law Examiners administers its own expenditures.

Administrative Office of the Courts

The AOC works under the supervision and direction of the Chief Justice of the Supreme Court of Tennessee, assists the Chief Justice in the administration of the judicial branch of government, serves as secretary to the Judicial Council, and attends to other duties assigned by the Supreme Court or Chief Justice.

The AOC has the additional duty of administering the accounts of the judicial branch of government by preparing, approving, and submitting budget estimates of appropriations necessary for the maintenance and operation of the state judicial system. The administrative director also draws and approves all requisitions for payment of judicial expenditures and submits vouchers to the Department of Finance and Administration. Additionally, the administrative director has the authority, within budgetary limits, to provide minimum law libraries to trial court judges.

In the performance of these duties, the administrative director of the AOC administers the following judicial appropriation codes:

a. **Appellate and Trial Courts**

Salaries and benefits are provided for all appellate court judges, circuit court judges, criminal court judges, chancellors, law and equity judges, and special judges appointed by the Chief

Justice as well as for the secretaries of these judges. The salaries and benefits for law clerks and certiorari attorneys employed by the appellate judges, the travel and office expenses for authorized judges, and the cost of law libraries for all appellate and trial judges are paid from this code.

b. Supreme Court Buildings

Funds for the operation, maintenance, and security of the Supreme Court Buildings in Nashville, Knoxville, and Jackson are disbursed through this code.

c. Child Support Referees

Funds are provided for hearings in child support cases to promote the timely fulfillment of parents' obligations to support their children.

d. Guardian ad Litem

This code provides payments to attorneys providing legal representation for children involved in dependency, neglect, or abuse cases.

e. Indigent Defendants' Counsel

This code provides payments to attorneys appointed to represent juveniles and adults who cannot afford attorneys in felony proceedings. The code also pays legal costs, including attorneys' fees, incurred by indigent patients during mental health hearings.

f. Civil Legal Representation

This code provides payments to agencies to represent defendants in civil matters. On May 18, 1995, the Tennessee General Assembly enacted Public Chapter 550, which amended Sections 16-3-803 and 67-4-1602, *Tennessee Code Annotated*, and thereby levied certain taxes on civil litigation and established a Civil Legal Representation of Indigents Fund for the purpose of providing legal representation of poor persons in civil matters. Pursuant to Rule 11, *Rules of the Supreme Court*, funds are distributed to eight Tennessee legal aid societies.

g. Verbatim Transcripts

This code provides salaries, benefits, travel costs, and miscellaneous expenses incurred by court reporters who provide trial transcripts for persons indicted for felonies.

h. Tennessee State Law Libraries

Law libraries are maintained in Nashville, Knoxville, and Jackson. Salaries and benefits for the law librarians and their assistants and funds to purchase the necessary books and materials to maintain the libraries are disbursed from this code.

i. Judicial Conference

This code provides for travel and miscellaneous expenses incurred in connection with the annual Judicial Conference mandated by statute and the two judicial seminars for continuing legal education scheduled each year.

i. Judicial Committees

This code provides for the travel expenses of the three members of the Committee on Uniform Laws and the state's annual dues to the National Conference of Commissioners on Uniform Laws. Travel expenses for members of the Judicial Selection Committee are also provided.

j. State Court Clerk Conference

This code provides for the travel and supplies expenses incurred in connection with the State Court Clerk Conference mandated by statute. At least one annual educational conference is required to be held. The membership of the conference includes all circuit court clerks, clerks and masters, elected probate clerks, criminal court clerks, juvenile court clerks, and elected general sessions court clerks in the state. Deputies of these clerks are associate members of the conference.

k. Administrative Office of the Courts

The salaries and operating expenses of the Administrative Office of the Courts are disbursed through this code. The Administrative Director is the administrative officer responsible for the day-to-day operations and the administrative details of the courts.

l. Appellate Court Clerks

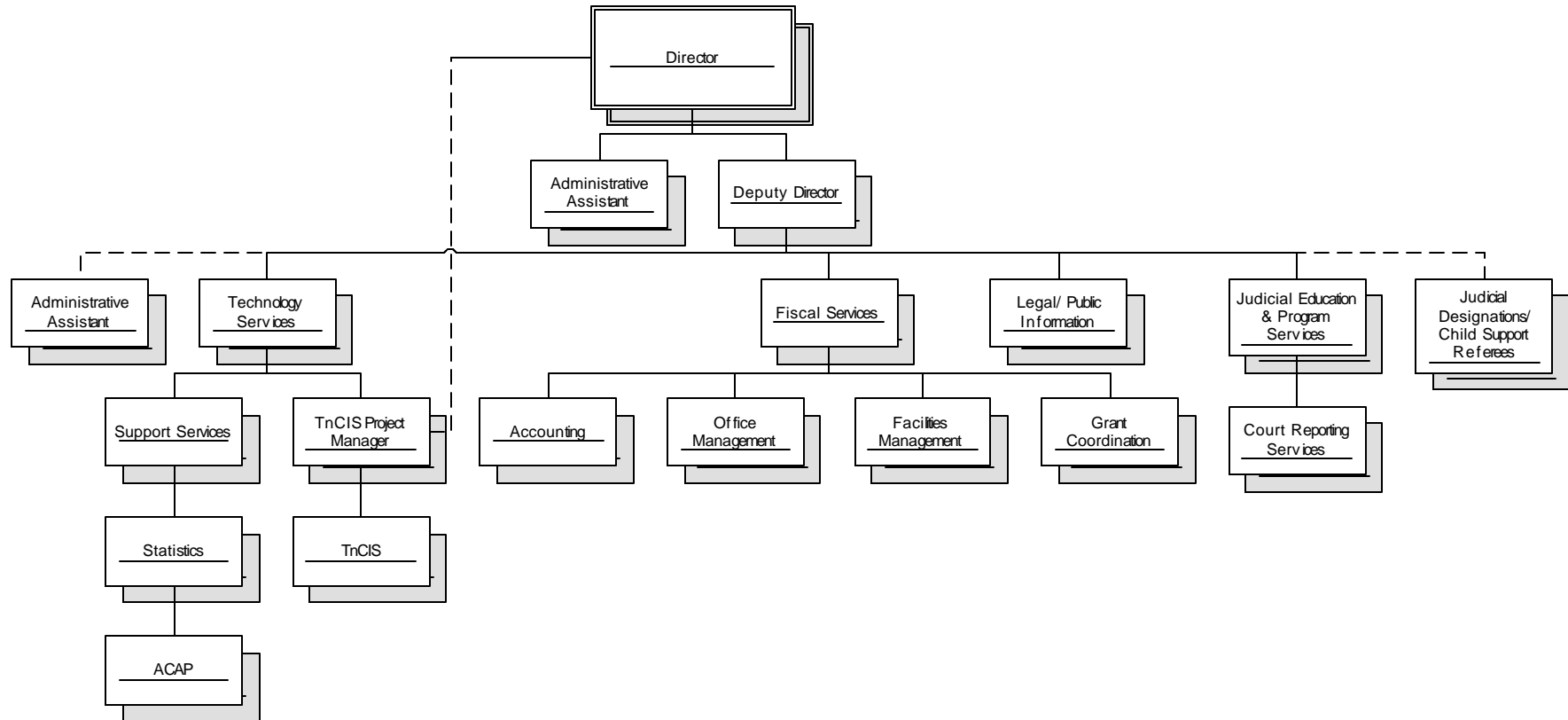
The offices of the clerks are in Nashville, Knoxville, and Jackson. Each office consists of the deputy clerk and assistants. The salaries of the deputy clerks and assistants are paid from fees collected by the clerk, as prescribed by Section 8-22-302, *Tennessee Code Annotated*. Salaries of certain office personnel and general operating expenses are paid from funds appropriated to the clerks.

State Board of Law Examiners

The State Board of Law Examiners is not administered by the Administrative Office of the Courts; it is responsible for administering its own expenditures. The State Board of Law Examiners consists of three members of the state bar who are appointed by the Supreme Court and serve staggered terms of three years. In addition, the board employs an executive secretary and necessary assistants as required by Rule 37 of the Supreme Court. The executive secretary performs various administrative duties, keeps account of all fees paid to the board, records all examinations, and otherwise assists the board in the performance of its official duties. Board assistants are attorneys who are selected to help grade examination papers.

An organization chart of the department is on the following page.

Court System



AUDIT SCOPE

We have audited the Court System for the period July 1, 1998, through June 30, 2000. Our audit scope included a review of management's controls and compliance with policies, procedures, laws, and regulations in the areas of appellate court clerk revenue, indigent defense payments, court reporter payments, and disbursements. The audit was conducted in accordance with government auditing standards generally accepted in the United States of America.

PRIOR AUDIT FINDINGS

Section 8-4-109, *Tennessee Code Annotated*, requires that each state department, agency, or institution report to the Comptroller of the Treasury the action taken to implement the recommendations in the prior audit report. The Court System filed its report with the Department of Audit on March 30, 2000. A follow-up of all prior audit findings was conducted as part of the current audit.

RESOLVED AUDIT FINDING

The current audit disclosed that the Court System has corrected the previous audit finding concerning insufficient guidance to judges who received federal drug court grants.

REPEATED AUDIT FINDINGS

The prior audit report also contained findings concerning appellate court clerks' billing and cash-receipting and violations of state contracting procedures for the Tennessee Court Information System. The finding concerning the appellate court clerks' billing and cash-receipting has not been resolved and is repeated in the applicable section of this report. We determined that violations noted in the finding concerning the Tennessee Court Information System had been resolved, but we determined that the Court System violated state contracting procedures for contracts with private court reporters as noted in the Court Reporter payments section.

OBJECTIVES, METHODOLOGIES, AND CONCLUSIONS

APPELLATE COURT CLERK REVENUE

Our objectives in reviewing the operations of the state's three divisional offices of the Appellate Court Clerk were to gain an understanding of the three offices' operations, to follow up on a past finding, and to determine whether

- physical controls over cash are adequate;
- procedures and controls over cash-receipting are adequate and being followed;
- revenue or fees have been billed or charged and recorded at the correct amount;
- revenue items deposited in the three offices were deposited timely, were properly coded in the state's accounting system, were mathematically accurate, and agreed with supporting documentation; and
- the Court System reconciled accounting records to reports issued by the Department of Finance and Administration.

We interviewed key personnel at the three deputy appellate court clerks' offices to gain an understanding of the billing system used and the controls over billing and cash-receipting. We reviewed a sample of receipts to determine if amounts deposited agreed with the amounts billed and if receipts were deposited timely and were coded properly in the state's accounting system. We reviewed a sample of revenue items to determine if the items were properly receipted, traced to deposit slips, and deposited timely. We reviewed billing records to determine if procedures for collecting delinquent court cost receivables and litigation taxes were adequate. Also, we reviewed supporting documentation to determine if the Court System was performing reconciliations to reports issued by the Department of Finance and Administration.

Based on our interviews, review of supporting documentation, and testwork, we found that the physical controls over cash are adequate and that accounting records were reconciled to reports issued by the Department of Finance and Administration. Also, we determined that the offices do not have adequate controls over billing, collection, and cash-receipting and are not following established policies. In addition to the finding, other minor weaknesses came to our attention which have been reported to management in a separate letter.

1. The Appellate Court Clerk's billing and cash-receipting controls are inadequate

Finding

As noted during the prior audit, the Appellate Court Clerk's controls over billing and cash-receipting are inadequate at all three of the Appellate Court Clerk's offices. Although the Administrative Office of the Courts (AOC) has promulgated cash-receipting policies for the three divisional offices, these policies are not being followed.

The offices receive the majority of their revenue from billings of court costs associated with the Supreme Court, Court of Criminal Appeals, and Court of Appeals. Additional revenue is also earned by providing copies of opinions to individuals or publishing companies and by issuing attorneys' certificates of good standing and enrollment.

In response to the finding in the prior audit report, management stated:

This audit covered the period ending June 30, 1998. The operations of the Clerk's office did improve for this audit period, but have shown more improvement over the last 12 months following the audit period. A new automated system will be in place by year-end and will remedy most of the inadequacies noted in this audit. More extensive daily review will be implemented to ensure that proper receipting policies and procedures are followed.

Management did implement a new automated billing system during the current audit period and corrected two of the issues noted in the prior finding. However, more extensive daily reviews were not performed by management, and the following weaknesses were noted during the current audit.

- a. As noted in the prior audit, the three deputy appellate court clerks' offices are responsible for collecting their own delinquent court costs that existed prior to the May 1997 creation of the new billing section. However, the Eastern Division has not adequately pursued these delinquent court costs.
- b. Section 67-1-804, *Tennessee Code Annotated*, provides for a penalty of 5% of the unpaid litigation tax for each 30 days or fraction thereof to a maximum of 25% for each delinquency, or a minimum penalty of \$15. As noted in the prior audit, the deputy court clerks' offices in the Eastern and Western divisions were not assessing and collecting the required penalties and interest on overdue litigation taxes incurred prior to May 1997 if partial payments were being received. The new billing section adds and collects the \$15 penalty on unpaid litigation tax cases arising since May 1997 but still does not collect the penalty on a percentage basis. Management implemented a new billing system that could have been designed to collect the penalties on a percentage basis, but the new system was not designed to do so.
- c. As noted in the prior audit, cash receipts are not written immediately for cash received through the mail or over the counter for the payment of court costs in the Eastern

Division. As stated above, management responded to the prior audit finding, stating that more extensive daily reviews would be implemented to ensure that proper receipting policies and procedures are followed. However, these reviews were not performed, and the same problems are continuing. An examination of deposit slips from the period July 1, 1998, through June 30, 2000, showed that 9 of 120 deposit slips tested (7.5%) contained 154 cash items and 20 (13%) of these cash items were not recorded in the cash receipts book. Also, the AOC has not monitored the court clerk's offices as stated in its response to the prior audit finding.

- d. As noted in the prior audit, all three divisions did not deposit their receipts in a timely manner. Twenty-one of 60 cash receipts tested (35%) were not deposited timely in accordance with Finance and Administration Policy 25, "Deposit Practices." Ten of 20 receipts tested (50%) in the Middle Division were deposited three to six days late. Six of 20 receipts tested (30%) in the Eastern Division were deposited three to nine days late, and 5 of 20 receipts tested (25%) in the Western Division were deposited four to six days late. Also, 6 of 60 deposit slips reviewed (10%) contained additional cash receipts that were not deposited timely in accordance with Finance and Administration Policy 25. Per Section 9-4-301, *Tennessee Code Annotated*,

It is the duty of every department, institution, office and agency of the state and every officer and employee of state government, including the state treasurer, collecting or receiving state funds, to deposit them immediately into the treasury or to the account of the state treasurer in a bank designated as a state depository or to the appropriate departmental account if authorized by Section 9-4-302.

Finance and Administration Policy 25 promulgates the compliance standards for "immediately" used in Section 9-4-301, *Tennessee Code Annotated*.

Recommendation

Management of the Administrative Office of the Courts should implement reviews to ensure its policies and procedures are followed in all three divisions. The deputy appellate court clerk in each division should ensure that cash items are immediately recorded in the accounting records, receipts are promptly and properly accounted for, all state funds are deposited timely in accordance with state law, and all receivables are promptly collected using any necessary enforcement. Allowable penalties and interest for all delinquent litigation taxes should be collected in accordance with state law.

Management's Comment

- a. The clerk concurs in part with this finding. The majority of the accounts reviewed by the auditor in the Knoxville office were accounts where all collection efforts had been exhausted and were dead

accounts subject to be written off. Of the approximately forty accounts reviewed, approximately fifteen were subject to additional collection efforts and these accounts have been worked. There was, apparently, a lack of communication between the field auditor's question with regard to the accounts and the chief deputy clerk's response with regard to the status of the subject accounts.

b. The clerk does not concur in this finding. In response, *T.C.A.* §67-1-804 (a)(1) states "when any person fails to timely make any return or report or fails to timely pay any taxes shown to be due on the return or report, there shall be imposed against that person a penalty in the amount of five percent (5%) of the unpaid tax amount for each thirty (30) days or fraction thereof that the tax remains unpaid subsequent to the delinquency date, up to a maximum of twenty-five percent (25%) of the unpaid amount." (emphasis added)

Litigation taxes are not due on a "return" or "report" as set forth in this statute. It is seriously questionable whether this section is applicable to the collection of litigation taxes. Litigation taxes are covered under *T.C.A.* §67-4-601 through §67-4-606. No implementation for the collection of penalties on litigation taxes is provided in these code sections. The cost department is currently assessing a \$15.00 penalty when the tax is not paid within 45 days from the issuance of the cost bill which is the only penalty that has been collected from time in memory. The office has never attempted to collect the percentage penalty as set out in *T.C.A.* §67-1-804 (a)(1). The clerk will seek an opinion from the Attorney General on whether *T.C.A.* §67-1-804 applies to the collection of litigation taxes. The current system (JITS) can accommodate the percentage penalties should the Attorney General opine such is appropriate.

c. The clerk concurs with this finding. However, in November of 1999 our office installed a new case management system for the appellate court clerks' offices. Receipts are automatically generated upon receipt of funds following entry into the system. The Knoxville office has been made aware of these irregularities, and checks are in place to see that proper policy is followed.

d. The clerk concurs with this finding. All offices have been instructed to strictly follow the deposit policy in accordance with Finance and Administration Policy 25. Since the last audit, Finance and Administration has increased the amount of funds that can be held over for deposit. Many of the receipts tested for this audit period would be in compliance under the new guidelines.

Currently, the clerk of the appellate courts has sole responsibility for the billing and collection of court costs. For a period of time during the audit period, the AOC supervised this responsibility. In the fall of 2000, the staff was physically and administratively transferred back to the clerk's office. Even though the AOC is available for consultation and support as needed by the clerk of the appellate courts, the AOC has no statutory authority to monitor or review the daily billing and collection process of the appellate courts.

Auditor's Comment

a. Management indicated during fieldwork that they had not pursued collection of the delinquent court costs prior to 1997. Based on the management comment, it appears that they have now

gone through the paperwork and identified which accounts should be pursued and which accounts should be written off. Management stated that 15 of 40 accounts (37.5%) were subject to additional collection efforts. During the audit period, the Eastern Division could not demonstrate that they had adequately pursued those accounts.

- b. Until the Attorney General opines on the matter, the auditor's position on the applicability of *T.C.A.* §67-1-804 differs from the position of the Court System management. Although *T.C.A.* §67-4-601-606 contains no provisions for collection of delinquent litigation taxes, §67-4-602(d) requires every person, for whom the clerks are required to collect a litigation tax, to be liable for the tax imposed. *T.C.A.* §67-1-801(a) provides that when any person who is liable to pay any tax collected or administered by the Department of Revenue, and fails to do so, interest shall be added to the amount of the tax due, in addition to any penalty provided by law. Section 67-4-605(a) requires the clerks of court to collect and pay over any litigation taxes to the Department of Revenue. Therefore, the penalty and interest provisions of §67-1-801 would apply to late payments of litigation taxes due to the Department of Revenue's administrative role. Although the individual responsible for payment of the litigation tax does not complete a "return" or "report," the clerk does file a return or report with the Department of Revenue stating the litigation taxes collected or to be collected. See *T.C.A.* §67-4-603(d). Therefore, if the litigant fails to pay timely the taxes shown to be due on the return or report, the litigant is responsible for the penalty imposed under *T.C.A.* §67-1-804(a)(1).

INDIGENT DEFENSE PAYMENTS

Our objectives in reviewing and testing indigent defense payments were to determine whether

- the procedures used to process billings from attorneys for Indigent Defense work are adequate to prevent or detect irregular billings;
- billings for Indigent Defense legal work are reasonable and are not duplicate submissions;
- the Indigent Defense Daily Report System reliably accumulates and calculates billing information from attorneys;
- the Administrative Office of the Courts (AOC) followed proper procedures for claims listed on the over-claim report, which is used by the AOC to detect irregular, duplicate, or excessive billings; and
- claims were properly approved.

We interviewed key personnel to gain an understanding of the AOC's controls over the payment of indigents' defense attorneys. We reviewed a sample of claims from the over-claim database and a sample from the remaining balance of claims, to determine if the AOC paid these claims in compliance with its policies and procedures. We obtained files from the Indigent Defense Daily Report System and performed computer-assisted audit techniques to search for unreasonable entries in key

data fields. We reviewed billings for selected indigents' defense attorneys and performed a computer-assisted analysis of these billings to determine if the total hours billed each day appeared reasonable. We also reviewed payments for the ten highest-paid attorneys in 1999 and 2000 and for 15 attorneys who had significant changes in the amounts paid from 1999 to 2000.

Based on our interviews, review of supporting documentation, and testwork, we determined that the AOC was in compliance with policies and procedures for claims tested and that claims tested were properly approved, appeared reasonable, and did not appear to be duplicate submissions. No irregularities were noted in our review of the payments to the ten highest-paid attorneys and the 15 attorneys with the most significant changes in amounts paid. However, we determined that the system used to accumulate billing information has several weaknesses.

2. The Indigent Defense Daily Report System still may not accurately detect overbilling

Finding

The Administrative Office of the Courts' Indigent Defense Daily Report System does not appear to reliably record, accumulate, and calculate billing information from attorneys. Management controls were insufficient to verify that the data entered into the system was accurate or complete. In addition, correcting entries were not subject to the same processing as initial entries, so that correcting entries did not result in accurate recalculation of total billing hours.

The Indigent Defense Daily Report System was implemented in January 1998 to detect and report instances where attorneys overbilled the state for indigent defense cases. It is an automated component of the overall Indigent Defense payment process and operates in conjunction with additional manual and automated procedures. The daily reporting component of the payment process is specifically designed to record and calculate attorneys' hours billed per day to ensure that billings for more than 8 hours in court, 12 hours out of court, or any excess of 12 hours daily are reported, subjected to further review, and corrected if necessary.

The auditors performed analysis of data obtained from the Indigent Defense Daily Report System since its inception January 7, 1998, through March 10, 2001. The analysis was designed to verify the reliability of key data fields essential to accurate processing and reporting by the system. Because of the following weaknesses, it appears unlikely that the system was capable of reliably reporting potential instances of overbilling.

Auditors identified the following weaknesses in the system's data:

- 181 instances were identified where an attorney billed for time on a future service date (for example, one claim was entered on January 20, 1998, but billed for service on October 13, 1998, even though service dates should precede entry dates);
- 61 instances were identified where the service date was questionable (e.g., in 1907);

- 58 attorney names were identified with two or more Social Security Numbers (SSNs);
- 25 individual SSNs were recorded to identify more than one attorney;
- 45 instances were identified where the SSN was not valid; and
- 34 instances were identified where the sum of the in-court hours and the out-of-court hours did not equal the total hours.

Based on the exceptions noted in the testing above, it appears that the system did not accurately record information in the key fields of SSN, DATE, INHRS, OUTHRS, and TOTAL. To detect billing errors reliably, the system must accurately record these key fields. In addition, it must accumulate subsequent INHRS and OUTHRS when new billings are entered. Finally, it must accurately calculate the TOTAL (hours). Hours per attorney per day are associated with the attorney's SSN. Consequently, multiple SSNs for the same attorney would result in inaccurate recording of all hours associated with that attorney's cases. Without accurate recording, accumulation, and calculation of the key fields noted above, it is impossible to determine that appropriate attorneys were included on the Daily Report, which could result in inaccurate billing.

According to AOC staff, the majority of the weaknesses were the result of data entry errors. AOC staff stated that the system was not designed to detect or edit data entry errors such as SSN discrepancies or erroneous dates. In addition, AOC staff reported that the system only calculated the TOTAL (hour) field when the data was first entered; corrections did not result in recalculation of the TOTAL field.

Auditor examination of the AOC verification of selected indigent defense payments during the audit did not reveal any instances of fraudulent or erroneous payments during the audit period. Manual and automated procedures other than those found within the Daily Report System appeared effective. However, the lack of controls within the Daily Report System over key data fields contributes to an environment where fraud or accounting errors could again occur.

Recommendation

Management controls over the system should be improved. Data entry procedures should be modified to ensure accurate recording of submitted claim information. Management should monitor data to ensure that key fields are being accumulated properly. In addition, the system's program logic should be examined and remedied to ensure that correcting entries are subject to accurate mathematical calculations.

Management's Comment

We concur in part. In 1998 the AOC, upon recommendation by the Comptroller's Office, developed a stand-alone program to detect and report instances where attorneys over bill the state for

indigent defense cases. That program was intended as an additional method of checks and balances, but does not actually feed data to our payment system, which is the actual system we use to determine payments. It acts as one additional step to help insure that attorneys are not billing for more time than they should. Many of the defects cited are currently detected by other processes involved in entry of payment into the STARS system or by the manual processes that are in place. When coupled with our mainframe program that processes warrants for the attorneys, this off line system works very well. As the finding notes, the audit did not detect any actual overpayments using the combined systems.

We realize the program was never meant to be a cure all, but merely a link to a permanent software package that would integrate this system with our mainframe payment system. Development of an integrated system has been delayed by lack of adequate funding.

Our Information System Plan for FY 2001-2002 includes a project to replace the daily reporting system and will also integrate our mainframe payment process into one package. Also, the new system will include an imaging component. Phase I of the project should commence in the fall of 2001. The AOC is undertaking this project with no additional funding.

The AOC takes very seriously the responsibility of accurate and timely payments to parties that represent indigent defendants. We have continuously improved/upgraded our system in this area and will continue to do so.

Auditor's Comment

As noted in the finding, there are two general areas of weakness in the Daily Reporting System: controls over dates and controls over Social Security Numbers. Because the system does not require that service dates be recorded accurately, an attorney may record hours on any date, regardless of its reasonableness to the case. For example, one attorney charged time in December 1999, although the case was completed in June 1999. The system was initiated to address the payment system's inability to accumulate hours spent by day. Because inaccurate recording of dates weakens the daily reporting system's ability to detect instances of overbilling, the overall payment process remains susceptible to questionable payments.

Social Security Numbers are entered separately into two independent systems during the processing of a claim. First the number is entered into the Daily Reporting System; then it is keyed again into the payment system. If the Social Security Number does not match an approved listing in the payment system, the system rejects the entry, and the claim is not paid until the entry is corrected in the IMS system. However, because the two systems do not exchange data with each other, errors detected by the payment system are not always corrected in the Daily Reporting System, and SSNs that are miskeyed in the Daily Reporting System, then keyed correctly in the payment system, may never be detected. As a result, the Daily Reporting System could report excess hours for attorneys who did not submit those hours, or fail to report excess hours if the hours were charged to an incorrect Social

Security Number. Either of these conditions limits the Daily Reporting System's effectiveness in detecting overbillings.

We recognize that the Administrative Office of the courts has plans to institute a single system that will incorporate the functions of the two separate systems. We would expect that the weaknesses noted in this finding will be addressed in the development of the new system.

COURT REPORTER PAYMENTS

The Administrative Office of the Courts pays official court reporters to record court proceedings and to prepare verbatim transcripts of criminal cases pursuant to court order. If such a state employee is not available, private court reporters may be hired to record court proceedings and prepare verbatim transcripts. A verbatim transcript is the official court record or transcript of a court proceeding. Judges typically order a verbatim transcript to be prepared when an appeal is filed. The Administrative Office of the Courts bears the cost of the verbatim transcript if the appellant is declared indigent by the court, pursuant to Section 40-14-312, *Tennessee Code Annotated*.

Our objectives in reviewing payment procedures for court reporters and verbatim transcripts were to determine whether

- the internal control system used to process verbatim transcripts for payment is adequate and in place;
- payments for verbatim transcripts and per diem charges were accurate and paid in accordance with established rates;
- total payments to state court reporters appear reasonable; and
- private court reporters have a contract that was approved by the Comptroller of the Treasury.

We reviewed the applicable laws and regulations, interviewed key personnel, and reviewed supporting documentation to gain an understanding of the internal control system for verbatim transcript payments. We reviewed a sample of payments to state court reporters for verbatim transcripts, to determine if the payments were mathematically accurate, authorized and approved by all the required parties, and paid in accordance with established rates. We reviewed a sample of verbatim and per diem payments to private court reporters to determine if they were properly approved, mathematically accurate, and paid in accordance with established rates. We analyzed total payments to state court reporters or private court reporters to determine reasonableness based on a typical yearly workload. Also, we determined if existing private court reporters have a contract that was approved by the Comptroller of the Treasury.

Based on our interviews, review of supporting documentation, and testwork, we determined that the AOC has adequate controls over the payments for verbatim transcripts. Per diem and verbatim payments to both state court reporters and private court reporters tested were accurate, authorized and approved by all the necessary parties, and paid in accordance with established rates. We determined total payments to state court reporters and private court reporters appeared reasonable. Also, we noted that the AOC failed to get the Comptroller of the Treasury's approval for contracts with private court reporters, as noted in the finding. In addition to the finding, one other minor weakness was reported to management in a separate letter.

3. The Administrative Office of the Courts violated state contracting procedures

Finding

The Administrative Office of the Courts (AOC) did not follow prescribed state procedures in contracting for services with private court reporters. The AOC did not have 96 of 103 private court reporter contracts (93%) approved by the Comptroller of the Treasury as required by the annual appropriations bill.

The AOC violated contracting procedures by failing to have these contracts approved by the Comptroller of the Treasury. Section 10, Item 2, of the annual appropriation bill states,

Any personal services, professional services or consultant services contracts concerning management service of all types, management studies, planning services, public relations, evaluations, systems designs, data processing, auditing or accounting services entered into by an executive department or agency of state government shall be executed by the head of such department or agency and shall be subject to approval by the Commissioner of Finance and Administration and the Comptroller of the Treasury. No funds appropriated under this act to a department or agency shall be used for such contracts unless such approval is received or is otherwise authorized by the approving officials. Any such contract entered into by agencies of the legislative or judicial branches shall be subject to the approval of the Comptroller of the Treasury.

Additionally, *Tennessee Code Annotated*, 16-3-803(e), states,

All functions performed by the administrative director of the courts which involve expenditures of state funds shall be subject to the same auditing procedures by the commissioner of finance and administration and the comptroller of the treasury as required in connection with the expenditure of all other state funds.

The administrative director of the AOC acted without authority in signing contracts without obtaining approval specified by state law. In addition, the AOC made 22 payments to 16 private court reporters without a contract in place at the date of service.

Based on discussions with management, the AOC submitted some of the contracts with private court reporters to the Comptroller of the Treasury for approval. The Comptroller of the Treasury's review of the contracts noted problems with the basic language of the contracts. However, the AOC has not corrected this language in any of its current contracts and has not submitted any other contracts to the Comptroller for approval. Therefore, the AOC is still making payments against contracts that have not been approved by the Comptroller of the Treasury. While the AOC did make an initial effort to have contracts properly approved, it appears that rather than correct problems in its contracts with the private court reporters, the AOC quit sending contracts to the Comptroller for approval.

Recommendation

The AOC should resolve the problems noted with the basic language in its court reporter contracts and obtain approval for all court reporter contracts from the Comptroller of the Treasury as required by state law. In addition, the AOC should negotiate contracts with all private court reporters before obtaining their services or making payments for such services.

Management's Comment

We do not concur that procedures regarding per diem court reporter contracts have been violated, but are pleased that we have reached agreement with the Comptroller of the Treasury on a delegated purchase authority for future per diem court reporter contracts. The need for written contracts with per diem court reporters was initially identified in March 1998, when the Comptroller released its audit report for the years ended June 30, 1995, and June 30, 1996. Since that time the AOC has attempted to secure Comptroller approval for contract forms, and to secure written contracts for all per diem court reporters employed in the court system. While some contracts have routinely been approved by the Comptroller, a number of others almost identical in form were not approved. The primary reason for the rejection has centered around the opinion of the Comptroller's Office that every contract should contain a half-day per diem rate as well as a whole day rate. Even when the AOC advised that this was not feasible in our business environment, contracts were not accepted. This disagreement has continued throughout the course of three audit periods, up to and including July 2001.

The Comptroller cites Section 10, Item 2 of the Annual Appropriations Bill to support its position that the details of pay rates in AOC contracts with private court reporters are "subject to the approval of the Comptroller of the Treasury."

T.C.A. §40-14-304 states in part that "reporters shall be paid on a per-diem basis under scales to be fixed by the administrative director." This statute gives the director of the AOC specific discretion to set per diem rates for court reporters. Furthermore, *T.C.A.* §40-14-315 authorizes the director of the AOC to "enter into such [transcription] contracts for and on behalf of the State of Tennessee on

such terms and conditions as the administrative director deems appropriate. . . .” These duties have remained unchanged since 1965. We believe this authorization is broader and more specific than that provided for any other type of contract in which we are involved.

T.C.A §9-4-5108(c) states: “[t]he appropriation bill shall not contain any provisions of general legislation.” The Attorney General of Tennessee opined that “[t]he duties and responsibilities of the various state agencies are set forth in general statutes, and not in the appropriations act.” Op. Tenn. Atty. Gen. No. 00-083 (May 4, 2000). The Attorney general has further opined that “provisions of the appropriations bill that attempt to alter general law are invalid because they introduce a second subject into the Act in violation of the second subject rule found in Article II, Section 17 of the Tennessee Constitution.” Op. Tenn. Gen. No. 00-130 (August 15, 2000).

Notwithstanding this longstanding disagreement between the Comptroller and the AOC, the AOC continues to prefer to receive approval for all court reporter contracts. We have therefore continued our discussions with the Comptroller’s Office of Management Services. On July 30, 2001, the Comptroller of the Treasury affixed his signature to a Delegated Purchase Authority, which authorizes the AOC to enter into agreements with per-diem court reporters during the fiscal year 2001-02. Under this authority the AOC will set the rates of daily service for reporters up to a maximum daily rate approved by the Comptroller. We are pleased to have reached this mutually agreeable solution, and believe this also will resolve our audit-related issues in the future.

Auditor’s Comment

The appropriations bill does not prohibit the administrative director from contracting for these services, however, it does make the state’s final authorization contingent upon the approval of the Comptroller of the Treasury. The Attorney General has opined that the legislature can make items of appropriation dependent upon events taking effect in the future, with the appropriation being without efficacy until the happening of the event. Op. Tenn. Atty. Gen. No. 81-55. The Comptroller as a matter of course keeps watch over the manner in which appropriations are expended; therefore, it is only natural for him to be in a position of approval over these types of contracts.

DISBURSEMENTS

Our objectives in reviewing disbursements included determining whether

- the internal control system used to process disbursements is adequate and in place;
- disbursements are properly authorized and recorded;
- payments are made in a timely manner;
- reimbursement of expenses incurred by employees is reasonable, adequately supported, and in accordance with state and AOC purchasing rules and regulations; and

- year-end cutoff procedures are sufficient to facilitate proper financial reporting.

We reviewed the AOC's procedures, interviewed key personnel, and reviewed supporting documentation to gain an understanding of the internal control system for disbursements. We reviewed a sample of disbursements to determine if the disbursement was properly authorized and recorded, adequately supported, and in accordance with applicable state and AOC rules and regulations. Also, we analyzed payments to employees for unusual items. We interviewed key personnel in order to gain an understanding of the office's procedures and controls related to year-end cutoff for financial reporting purposes. Our work consisted of reviewing July 2000 disbursements to determine if the invoices had been paid in the correct fiscal year.

Based on our interviews, review of supporting documentation, and testwork, we determined that the internal control system for disbursements, as well as other areas in the AOC, is inadequate. In addition, disbursements are not always coded correctly, as noted in the finding. We noted that payments are made in a timely manner and reimbursement of expenses incurred by employees, including travel, is reasonable, adequately supported, and in accordance with applicable policies. Based on our interviews, review of supporting documentation, and testwork, we determined that the AOC has sufficient controls and procedures to ensure an accurate cutoff at fiscal year-end. In addition to the finding, one minor weakness was reported to management in a separate letter.

4. Management of the Administrative Office of the Courts has not implemented an effective internal control system

Finding

The internal control system for the Administrative Office of the Courts (AOC) is inadequate in three key areas. The AOC does not have a formal, written conflict of interest policy; written accounting policies and procedures; or a disaster recovery plan. Internal control is defined as the plan of organization and all the coordinate methods and measures adopted within an organization to safeguard its assets, to check the accuracy and reliability of the accounting data, to promote operational efficiency, and to encourage adherence to prescribed managerial policies. Management is responsible for ensuring that the AOC has sufficient internal control over its operations.

The AOC does not have formal, written accounting policies and procedures covering disbursements, purchasing, payroll, or specific job descriptions. Documenting policies and procedures helps to ensure that personnel follow established internal control practices. Without written accounting policies and procedures, management has no guidelines for monitoring internal controls, ensuring accounting transactions are recorded consistently, and ensuring assets are sufficiently safeguarded.

Also, the AOC does not have an approved disaster recovery plan or business resumption plan. Because the AOC is increasingly reliant on electronic data processing to carry out key operations, the lack of a formal disaster recovery plan could put the AOC's operations at serious risk in the event of an emergency. The AOC also does not have a business resumption plan to provide continuity of

administrative, clerical, and operational functions in case its office and related work areas are damaged or destroyed. The potential for interrupted service and lost data increases significantly without an adequate contingency plan. In the event of an emergency or disaster, the AOC would not be equipped to carry out day-to-day operations. No plans have been made for an alternate facility for computer-related activities.

In addition, a formal, written policy on and procedures for dealing with conflicts of interest have not been developed or implemented. A formal conflict of interest policy is vital to ensure that the public's interest is protected and to identify any potential conflicts of interest before they occur. A formal policy should require periodic, written disclosures of potential conflicts of interest for all employees for whom potential conflicts of interest could influence or give the appearance of influencing their decisions.

As a result of the weak internal controls, transactions were not always coded properly. A review of 128 transactions coded to object code 083 revealed that 34 (27%) were not coded properly. Of the 34 transactions, 30 (23%) were actually for travel, 3 (9%) were for transcript payments to state court reporters, and one (1%) was for postage. According to the State of Tennessee Accounting and Reporting System (STARS) Object Code Listing, object code 083 payments should be for Consulting Services—Professional services rendered by non-state employees.

An effective internal control system is essential to account for and manage government resources and to ensure that accounting records are accurate. Management has the responsibility to institute internal control procedures that will ensure all transactions are properly authorized, supported, and properly recorded. Management's responsibility for establishing effective internal controls also includes effective supervisory review procedures to provide reasonable assurance that errors and irregularities will be detected by management in a timely manner.

Recommendation

The AOC should implement an effective internal control system. The AOC should develop written policies and procedures to provide personnel in the divisions proper guidance in administering their responsibilities for purchasing, disbursements, and payroll activities. The AOC should develop and test a disaster recovery and business resumption plan for all areas of its operations. A formal, written conflict of interest policy should also be adopted and communicated to all employees.

Management's Comment

We concur in part. The AOC will develop written accounting policies and procedures by September 30, 2001.

Written policies and procedures will be developed and organized in an accounting manual for all staff within the Finance Division. Internal control test work will be implemented in order to prevent fraud, waste and abuse. The payment process will be tested quarterly. A sampling of invoices paid will be reviewed to ensure that they comply with our accounting guidelines. Areas of weaknesses will be identified and corrective action will be taken to ensure compliance with our accounting guidelines.

A formal, written policy for judges dealing with conflicts of interest is found in Supreme Court Rule 10, Canon 4, Code of Judicial Conduct. Under the authority of that Rule and *T.C.A.* §8-50-501, all judges and the AOC director file annual written disclosure statements.

There are very few AOC employees for whom potential conflicts of interest “could influence or give the appearance of influencing their decisions.” However, a conflict of interest statement and related policy have been developed and await final approval. These forms will be signed by all appropriate court system staff by November 1, 2001.

The requirement to have an approved disaster recovery or business resumption plan applies only to executive branch agencies. See *T.C.A.* §58-2-108. Therefore, we cannot concur that a finding on this point is appropriate.

Auditor’s Comment

Although the law cited by AOC management only applies to executive branch agencies, that fact does not negate the importance of having a disaster recovery plan and a business resumption plan. As stated in the finding, the potential for interrupted service and lost data increases significantly without an adequate contingency plan.

ISSUE FOR LEGISLATIVE CONSIDERATION

County Funding of Certain State Judges’ Offices and the Provision of Salary Supplements to Certain Employees

Currently, county governments provide varying levels of support to state judges; some counties make no provision for the operation of the judges’ offices while others provide office space, office supplies, utilities, and reimbursement of certain travel expenses. In addition, some county governments provide salary supplements to individuals employed in certain judges’ offices. These salary supplements are paid through the county’s payroll system, and these employees receive varying levels of county benefits; some employees have been allowed to participate in county insurance and retirement plans, while others have not.

The presence of both state and county funding sources increases the risk that the same expense item could be submitted for reimbursement to more than one funding source, whether intentionally or as a result of errors. The officials responsible for approving payments at the state and county levels do not have a mechanism to determine what expenses have also been paid by another funding source. The General Assembly should consider requiring any county funding of the state judges' offices, except for office space provided in county-owned facilities, to be remitted to the state and then paid through the state system.

A similar situation involving a district attorney general's office and county-funded credit cards previously resulted in abuse of public funds.

OBSERVATIONS AND COMMENTS

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Section 4-21-901, *Tennessee Code Annotated*, requires each state governmental entity subject to the requirements of Title VI of the Civil Rights Act of 1964 to submit an annual Title VI compliance report and implementation plan to the Department of Audit by June 30, 1994, and each June 30 thereafter. The Court System filed its compliance reports and implementation plans on June 30, 2000, and June 30, 1999.

Title VI of the Civil Rights Act of 1964 is a federal law. The act requires all state agencies receiving federal money to develop and implement plans to ensure that no person shall, on the grounds of race, color, or origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal funds.

On October 15, 1998, the commissioner of Finance and Administration notified all cabinet officers and agency heads that the Human Rights Commission is the coordinating state agency for the monitoring and enforcement of Title VI.

A summary of the dates state agencies filed their annual Title VI compliance reports and implementation plans is presented in the special report *Submission of Title VI Implementation Plans*, issued annually by the Comptroller of the Treasury.

TITLE IX OF THE EDUCATION AMENDMENTS OF 1972

Section 4-4-123, *Tennessee Code Annotated*, requires each state governmental entity subject to the requirements of Title IX of the Education Amendments of 1972 to submit an annual Title IX compliance report and implementation plan to the Department of Audit by June 30, 1999, and each June 30 thereafter. The Court System did not file its compliance reports and implementation plans by June 30, 2000, and June 30, 1999, in violation of this statutory requirement.

Title IX of the Education Amendments of 1972 is a federal law. The act requires all state agencies receiving federal money to develop and implement plans to ensure that no one receiving benefits under a federally funded education program and activity is discriminated against on the basis of gender.

APPENDIX

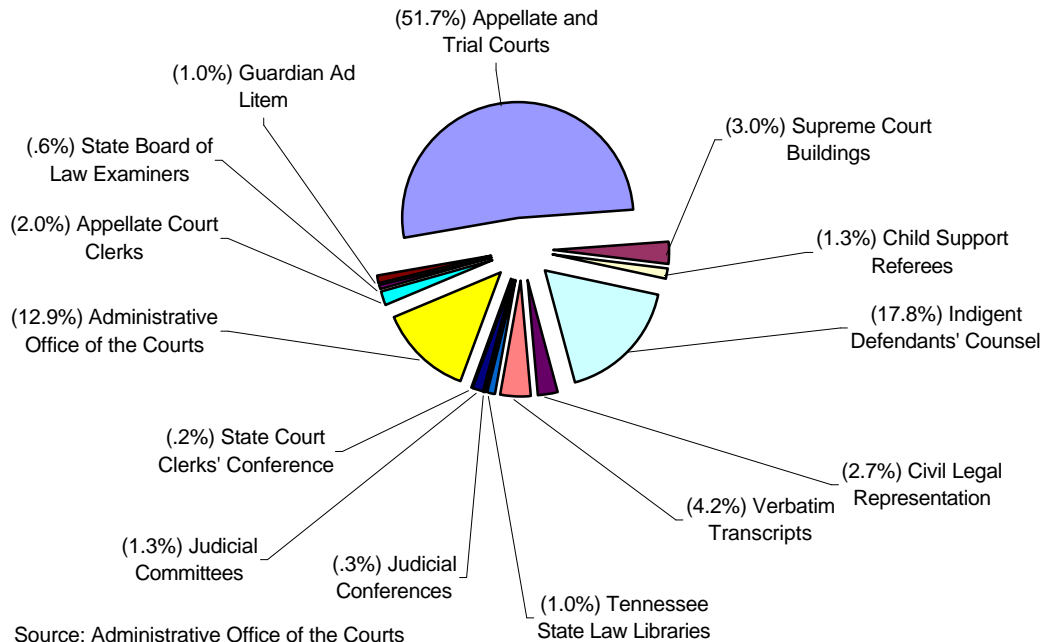
DIVISIONS AND ALLOTMENT CODES

Court System's divisions and allotment codes:

302.01	Appellate and Trial Courts
302.05	Supreme Court Buildings
302.08	Child Support Referees
302.09	Guardian ad Litem
302.10	Indigent Defendants' Counsel
302.11	Civil Legal Representation
302.12	Verbatim Transcripts
302.15	Tennessee State Law Libraries
302.18	Judicial Council and Conference
302.20	Judicial Committees
302.22	State Court Clerk Conference
302.27	Administrative Office of the Courts
302.30	Appellate Court Clerks
302.35	State Board of Law Examiners

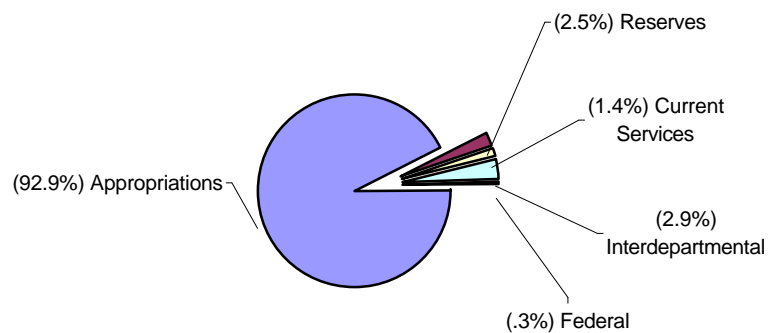
Court System Expenditures by Allotment and Division

Fiscal Year Ended June 30, 2000 (Unaudited)



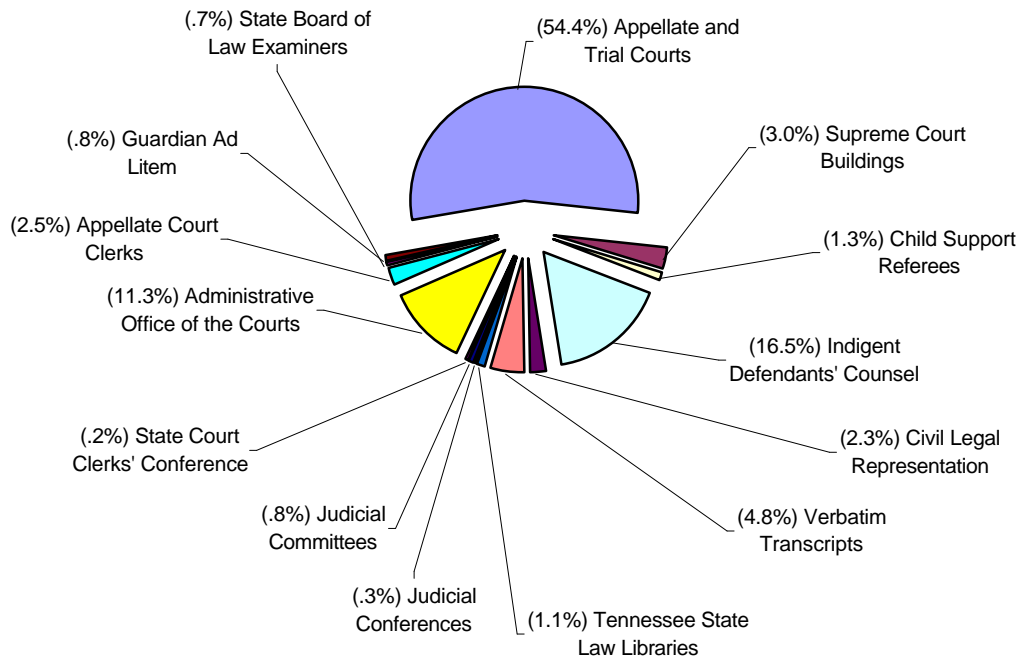
Court System Funding Sources

Fiscal Year Ended June 30, 2000 (Unaudited)



Court System Expenditures by Allotment and Division

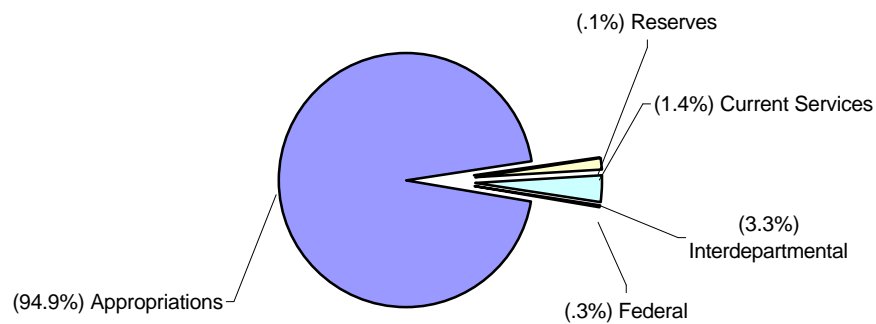
Fiscal Year Ended June 30, 1999 (Unaudited)



Source: Administrative Office of the Courts

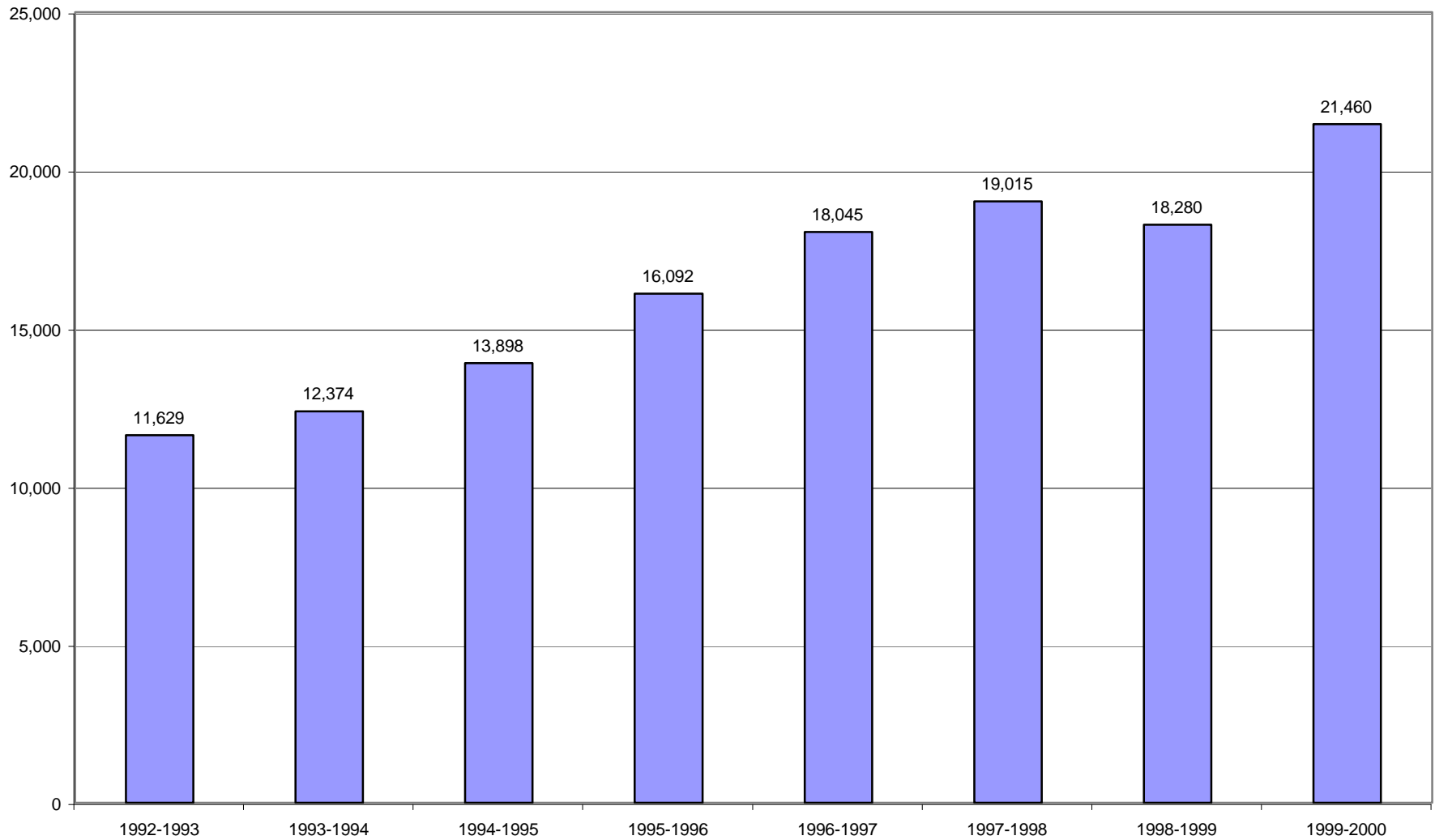
Court System Funding Sources

Fiscal Year Ended June 30, 1999 (Unaudited)



Source: Administrative Office of the Courts

Total Indigent Defense Claims Filed by Fiscal Year (Unaudited)



Source: Administrative Office of the Courts